

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

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SEP 30 2005

MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
GUADALUPE VALDEZ, individually and)
d/b/a LUPES TAX SERVICE,)
)
Defendant.)

Civil No. 05 C 5 0 2 0 1

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, for its complaint against defendant Guadalupe Valdez, individually and d/b/a Lupes Tax Service, states as follows:

Nature of Action

1. This is a civil action brought by the United States pursuant to 28 U.S.C. §§ 1340 and 1345, and Internal Revenue Code (26 U.S.C.) §§ 7402, 7407, and 7408 to permanently enjoin defendant Guadalupe Valdez, individually and d/b/a Lupes Tax Service, from:

- a. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position;
- b. Engaging in conduct subject to penalty under 26 U.S.C. § 6695, including failing to sign a return or claim for refund;
- c. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws;
- d. Preparing or assisting in the preparation of any federal tax return, amended return, or claim for refund, for any person or entity other than himself (or his spouse, if filing a joint return);
- e. Providing any tax advice or services to any person or entity, including

providing electronic filing or tax consulting services to customers or representing customers before the Internal Revenue Service (IRS);

- f. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that he knows will (if so used) result in an understatement of tax liability; and
- g. Instructing, advising, or assisting taxpayers to understate their federal income tax liabilities.

Jurisdiction

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of the Attorney General of the United States, pursuant to the provisions of 26 U.S.C. §§ 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402(a), 7407, and 7408.

Defendant

4. Guadalupe Valdez resides and conducts his business, Lupes Tax Service, an unincorporated business, at 3550 Cord Court, Rockford, Illinois 61101.

Valdez's Tax Preparation Business

5. Valdez has been preparing federal individual income tax returns (Forms 1040 and 1040X) for customers since at least 1982.

6. Valdez currently works at Kohl's department store part-time as a general maintenance employee.

7. Valdez has taken an H&R Block tax course and subscribes to IRS practitioner

newsletters that are received via email.

8. Valdez operates his tax-preparation business under the name Lupes Tax Service.

9. Valdez is an authorized IRS e-file provider, which allows him to file individual and business returns electronically.

10. According to IRS records, Valdez prepared 343 individual federal income tax returns in 2000, 448 returns in 2001, 637 returns in 2002, and 596 returns in 2003.

Valdez's Preparation of False and Fraudulent Returns.

11. Valdez prepares for his customers returns that underreport the customers' correct tax liability.

12. Valdez prepares for his customers returns that

- claim false head-of-household filing status;
- claim false dependency exemptions; or
- contain other false and fraudulent information.

13. Valdez knew or should have known that returns he has prepared understate his customers' correct tax liability.

Valdez's Preparation of Returns Claiming Refunds Based on Bosnian Refugee Status

14. During 2003, Valdez prepared approximately 159 amended federal income tax returns, claiming refunds based on Bosnian refugee status.

15. With minor variations, the amended returns claiming refunds based on Bosnian refugee status which Valdez prepared stated, as the justification for the refunds, "I THINK I AM ENTILED [sic] TO THIS REFUND STATUS REFUGEE FROM BOSNIA."

16. Valdez charged \$25 for each amended return he prepared claiming a refund based

on Bosnian refugee status.

17. Valdez did not sign, or place his preparer identification number on, all of the amended returns that he prepared which claimed a refund based on Bosnian refugee status.

18. Valdez instructed a customer for whom he prepared amended returns claiming a refund based on Bosnian refugee status to make checks payable to him personally, as "Lupe Valdez," and not to make checks payable to his business name, "Lupes Tax Service."

19. Valdez did not perform any tax research before preparing the amended returns claiming a refund for Bosnian refugee status.

20. Valdez alleges that he called the IRS toll-free help line, in March, 2003, after he had prepared a number of amended returns seeking a refund based on Bosnian refugee status, to ask if Bosnians were exempt from federal income taxes. The IRS informed Valdez that there was no federal refund or credit available for Bosnian refugee status.

21. Valdez falsely represented to the IRS that he had prepared only between 25 and 40 amended returns claiming Bosnian refugee status.

22. Valdez falsely represented to the IRS that the reason he had not signed all amended returns he prepared that claimed Bosnian refugee status, was because he had not been paid.

23. Valdez knew or should have known that he was understating the tax liabilities of customers for whom he prepared amended returns that claimed Bosnian refugee status.

24. Valdez knew or should have known that the amended returns he prepared claiming Bosnian refugee status were false and fraudulent.

25. Valdez attempted to impede the IRS investigation of his wrongdoing by

concealing from the IRS the extent of his involvement in preparing amended returns claiming Bosnian refugee status.

Harm Caused by Valdez's Conduct

26. By preparing returns that claimed false and fraudulent refunds or that wrongfully understated his customers tax liabilities, Valdez has caused irreparable injury to the United States, to his customers, and to the public at large.

27. Valdez's conduct has harmed the United States by causing IRS resources to be expended in identifying and examining returns and amended returns that he prepared, thereby reducing the level of service the IRS can give honest taxpayers.

28. Valdez's conduct has also harmed the United States by encouraging in his customers, who are United States taxpayers, a reckless disregard for the internal revenue laws.

29. Valdez's conduct has harmed his customers, whom he has exposed to penalties, to statutory interest charges on the amount of the tax understatement, and to possible criminal charges.

30. Valdez's conduct has harmed the public at large, by eroding public confidence in the fairness of the United States' system of self-assessed taxes.

Count I: Injunction under 26 U.S.C. § 7407

31. The United States incorporates by reference the allegations contained in paragraphs 1 through 30 above.

32. 26 U.S.C. § 7407 authorizes a district court to enjoin an income tax return preparer from:

- a. Engaging in conduct subject to penalty under 26 U.S.C. § 6694 (which penalizes a

return preparer who knowingly prepares or submits a return that contains an unrealistic position);

- b. Engaging in conduct subject to penalty under 26 U.S.C. § 6695 (which penalizes a return preparer who, *inter alia*, wilfully fails to sign a return when required);
- c. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws;

if the Court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

Additionally, if the Court finds that the preparer has continually or repeatedly engaged in such misconduct and if the Court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of federal tax laws, the Court may enjoin the person from further acting as a federal income tax return preparer.

33. Valdez has engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns (Forms 1040) and claims for refund (Forms 1040X) based on frivolous and fraudulent deductions and by asserting positions on income tax returns which he knew were false or frivolous.

34. Valdez has engaged in fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

35. Valdez's actions fall within 26 U.S.C. §§ 7407(b)(1)(A), (C), and (D), and are thus subject to injunction under § 7407.

36. Because of Valdez's continual and repeated conduct subject to injunction under 26 U.S.C. § 7407, combined with his other conduct described in this complaint, he should be permanently enjoined from acting as an income tax return preparer.

Count II: Injunction under 26 U.S.C. § 7408

37. The United States incorporates by reference the allegations contained in paragraphs 1 through 36 above.

38. Section 7408 authorizes this Court to enjoin persons who have engaged in conduct subject to penalty under 26 U.S.C. § 6701 from engaging in further such conduct if the Court finds that injunctive relief is appropriate to prevent recurrence of the conduct. Section 6701 imposes a penalty on any person who aids in the preparation of any portion of a return or other document, having reason to know that the portion will be used to assert a position under the internal revenue laws, and knowing the portion will result in an understatement of another person's tax liability.

39. Valdez has prepared federal income tax returns that he knows will result in the understatement of another person's federal income tax liabilities. Unless enjoined by this Court, Valdez is likely to continue to engage in this conduct. Injunctive relief is appropriate under 26 U.S.C. § 7408.

Count III: Injunction Under 26 U.S.C. § 7402

40. The United States incorporates by reference the allegations in paragraphs 1 through 39 above.

41. Valdez, through the conduct described above, has engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court he is likely to continue to engage in such conduct. His conduct causes irreparable injury to the United States for which the United States has no adequate remedy at law. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a) to prevent

such conduct.

Appropriateness of Injunctive Relief

42. Unless enjoined by the Court, Valdez is likely to continue to engage in the conduct described in paragraphs 1 through 31 above.

43. Valdez's conduct, as described in paragraphs 1 through 31 above, causes irreparable harm to the United States for which the United States has no adequate remedy at law. Specifically, Valdez's conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, some of which may never be recovered, thus resulting in a permanent loss. Moreover, unless Valdez is enjoined, the IRS will have to devote some of its limited resources to detecting and auditing future fraudulent Valdez-prepared returns, thereby reducing the level of service that the IRS can give honest taxpayers.

44. If Valdez is not enjoined, he likely will continue to engage in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701.

45. If Valdez is not enjoined, he likely will continue to engage in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

WHEREFORE, the United States prays for the following relief:

A. That the Court find that defendant Guadalupe Valdez, individually and d/b/a Lupes Tax Service, has engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that injunctive relief prohibiting that conduct is appropriate under 26 U.S.C. § 7407;

B. That the Court find that defendant Guadalupe Valdez, individually and d/b/a Lupes Tax Service, has engaged in conduct subject to penalty under 26 U.S.C. § 6701 and that injunctive relief prohibiting that conduct is appropriate under 26 U.S.C. § 7408;

C. That the Court find that defendant Guadalupe Valdez, individually and d/b/a Lupes Tax Service, has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief prohibiting that conduct is appropriate under 26 U.S.C. § 7402(a);

D. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7408, find that it is appropriate to enter a permanent injunction prohibiting defendant Guadalupe Valdez, individually and d/b/a Lupes Tax Service, from acting as an income tax return preparer;

E. That the Court, pursuant to 26 U.S.C. § 7407, find that Valdez has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and has also continually and repeatedly engaged in other fraudulent and deceptive conduct which substantially interferes with the proper administration of the internal revenue laws, and that an injunction prohibiting such conduct would not be sufficient to prevent his interference with the proper administration of the internal revenue laws, and enter a permanent injunction prohibiting defendant Guadalupe Valdez, individually and d/b/a Lupes Tax Service, from acting as an income tax return preparer;

F. That the Court, pursuant to 26 U.S.C. § 7402, prohibit Valdez from preparing or assisting in the preparation of any federal tax return, amended return, or claim for refund, for any person or entity other than himself (or his spouse, if filing a joint return);

G. That the Court, pursuant to 26 U.S.C. § 7402, prohibit Valdez from providing any tax advice or services to any person or entity, including providing electronic filing or tax consulting services to customers or representing customers before the Internal Revenue Service;

H. That the Court, pursuant to 26 U.S.C. § 7402, order Valdez to contact all persons for whom he prepared federal tax returns, amended tax returns, or any other federal tax forms after

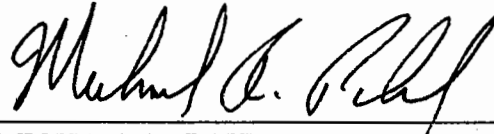
January 1, 2000 and inform those persons of the entry of the Court's findings, the possibility that penalties may be imposed against them, the possibility that the United States may seek to collect any additional federal income taxes, penalties, and interest which they may owe, and the entry of the permanent injunction against Valdez;

I. That the Court, pursuant to 26 U.S.C. §§ 7402 and 7407, require Valdez to turn over to the United States copies of all federal tax returns or claims for refund, and the names, addresses, e-mail addresses, telephone numbers, and Social Security numbers of customers for whom he prepared such returns or claims for refund, since January 1, 2000;

J. That the Court permit the United States to monitor Valdez's compliance with the injunction, to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

K. That the Court grant the United States such other and further relief, including the costs of this action, as the Court deems appropriate.

PATRICK J. FITZGERALD
United States Attorney

A handwritten signature in black ink, appearing to read "Michael R. Pahl", written over a horizontal line.

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